The employment of the watchman shows no more than that the respondents had been sufficiently concerned about the safety of their property from theft or fire to have there the watchman whom they employed. That fact would not support an inference that they considered their building any more likely to catch fire than the ordinary run of buildings, and still less would it support a conclusion that a reasonable person in their position would have thought an outbreak of fire so likely that reasonable care in the interests of neighbours would not be taken unless an efficient watch were kept throughout the night.

The only duty, then, which the respondents owed to the appellants in respect of a fire not caused by any act or omission of theirs or of any servant or agent of theirs was the duty which arises under the principle explained in *Goldman* v. *Hargrave*.[6] It was a duty based upon knowledge of the fire, ability to foresee the consequences to the appellants of not checking it, and ability to abate it. The knowledge of the watchman is necessarily to be attributed to the respondents, and the consequences to the appellants of an extension of the fire to their building were plainly foreseeable by anyone in the position of the watchman after the fire had come to his notice. In these circumstances the only questions to be decided were whether the watchman, after he became aware of the fire, ought to have done anything more than he did with a view to saving the appellants' building, and, if so, whether his failure was a cause of the appellants' loss. He seems to have lost his head and done nothing beyond telling someone else to call the fire brigade, trying to telephone one of his employers, and helping to remove a vehicle from a place of danger. But the evidence failed to establish that when he was wakened, as apparently he was by the shouts of a neighbour, there was still time for him to do anything that might have saved the appellants' building. The neighbour, who had been sleeping in a caravan on adjoining property, was the first to observe the fire, and he gave evidence fixing the time as between 5 and 5.30 a.m. (He explained an earlier statement he had made fixing it at "about 4.30 a.m." as having given only an approximate time.) It was already, he said, a very big fire. The watchman himself said that he heard the shout of "Fire!" at about 5 a.m. Though the watchman did not telephone the fire brigade, someone did; and according to evidence given by the acting divisional fire officer who took charge of the brigade's operations — evidence which was based upon his records and upon which no doubt was cast at the trial — the brigade received the alarm at 5.30 a.m. An engine was despatched one minute later. It was followed by another, and they reached the fire at 5.35 and 5.44 a.m. respectively. The firemen put the fire out in about an hour, but they could not save the appellants' building. The acting divisional fire officer was asked at the trial whether he could have stopped the spread of the fire from the respondents' premises if the alarm had been given twenty to thirty minutes earlier than it was, and his reply was that he would not have been able to do so. In view of this evidence, and of the fact that a precise recollection of times was not to be expected of men caught up in the sudden excitement of so dramatic an event, it would have been clearly unsound for the judge to conclude that the respondents' watchman had such an opportunity to call the brigade that if he had taken it the appellants' building would have been saved.

The watchman's omission to use any of the fire extinguishers in the respondents' building must likewise be put out of the case. The extinguishers were destroyed in the fire, and there is nothing in the evidence to show that at the time when the watchman woke they were still usable and within his reach, or that if they were intact and within reach their use could have been of any avail. The acting divisional fire officer, it may be mentioned, gave evidence that extinguishers are useful only at the first stage of a fire.

In the result their Lordships are of opinion that the finding of negligence against the respondents was unsupported by the evidence, and that the Federal Court was right in setting aside the judgment which had been given for the appellants.

Their Lordships will report to the Head of Malaysia their opinion that the appeal should be dismissed and that the appellants should pay the respondents' costs of the appeal.

Appeal dismissed.

Solicitors: *Parker Garrett & Co.; Stephenson, Harwood & Tatham.*

NGUI KEE SIONG v. GUAN SOO SWEE & ANOR.

[O.C.J. (Winslow J.) July 17, 1970]
[Singapore — Suit No. 388 of 1968]

Negligence — Highway — Junction controlled by traffic lights — Defective traffic lights — Duty of driver approaching defective traffic lights at controlled junction.

Road Traffic — Traffic lights at junction — Defective — Duty of driver approaching.

Damages — Personal injuries — Fractured femur, tibia and fibula — Multiple scars — 2½" shortening of left leg — Pain and suffering — Loss of earnings.

A taxi driven by the first defendant in which the plaintiff was travelling as a passenger came into collision with a lorry driven by the second defendant at a junction of a minor road and a major road. The taxi was proceeding along the one-way major road while the lorry was entering the junction from the minor road. The junction was controlled by traffic lights. At the material time, the traffic lights were not functioning properly. In the direction of the minor road the traffic lights were changing at approximately two-second intervals from green to amber to green. In the direction of the major road the traffic lights were changing at a faster speed than usual, green, amber, red. The plaintiff brought an action against both drivers claiming damages for personal injuries as a result of the road accident. He suffered a compound fracture of his femur, tibia and fibula. There was severe and multiple scarring and a 2½" shortening of his left leg. He had a suppurating sinus in his left leg for a considerable length of time and there was permanent limitation of movement of the left leg. He was a junior officer in the Fisheries Department in Sarawak and as a result of his injuries could not continue as a field officer and was transferred and is now a clerical officer.

Held: (1) both the defendants were guilty of negligence in failing to keep any or any proper lookout and in failing

to drive their respective vehicles with the degree of care and caution which the circumstances of the case required and the situation demanded;

(2) the first defendant was one-third responsible for the accident and the second defendant was two-thirds responsible as he was proceeding from a minor road on to a one-way major road;

(3) there should be an award of $27,000 general damages, $20,000 for pain and suffering and loss of amenities and $7,000 for loss of future earnings, and $900 as agreed special damages.

[Editorial Note: In *Ramoo* v. *Ong Ah Ho & Anor.* [1968] 2 M.L.J. 66 the plaintiff, Ramoo, was involved in the same accident whilst a passenger in the same taxi as the plaintiff in this suit. In the earlier action Guan Soo Swee, who was the second defendant there (the first defendant in the present suit) elected not to give evidence. Counsel for the plaintiff did not know at the commencement of the trial that the lights were out of order but this became known during the course of the trial. In the event Buttrose J. found both defendants liable in the proportions of 75% and 25% between the lorry driver and taxi driver respectively. On appeal ([1969] 1 M.L.J. 59) the Federal Court found that there was no evidence that either the driver of the lorry or the driver of the taxi knew that the traffic lights were defective and in the circumstances, the plaintiff, Ramoo, had failed to prove that either or both the drivers were negligent.

In the present suit Guan Soo Swee, the first defendant, the taxi driver, gave evidence and further additional evidence as to the defective state of the lights was adduced.

In the earlier suit where the judgment was reversed by the Federal Court, the plaintiff has proceeded to the Judicial Committee of the Privy Council on appeal in Appeal No. 22 of 1969. The said appeal is still pending.]

Case referred to:-

(1) *Lang* v. *London Transport Executive & Anor.* [1959] 3 All E.R. 609.

CIVIL SUIT.

H. E. Cashin for the plaintiff.

K. E. Hilborne for the 1st defendant.

Yap Tyou Min for the 2nd defendant.

Cur. Adv. Vult.

Winslow J.: The plaintiff in this action alleges negligence on the part of the first and second defendants as did the plaintiff in Suit No. 1219 of 1967 (*Ramoo* v. *Ong Ah Ho & Anor.* [1968] 2 M.L.J. 66) against the same defendants in relation to the same accident whilst the plaintiff in this suit was a passenger in the back seat on the nearside of the same taxi which was being driven by the present first defendant along Dunearn Road in a southerly direction towards the city. The plaintiff in the other suit sat in the front seat next to the taxi driver. The second defendant was driving a lorry filled with sand along Whitley Road towards its junction with Dunearn Road where it collided with the nearside of the taxi and both plaintiffs were injured.

The first defendant herein was the second defendant in the previous suit and the second defendant herein was the first defendant in the previous suit.

In the previous suit, Buttrose J. in the High Court found that the accident occurred at about 7.30 a.m. on 10th July, 1966, which was a Sunday morning. In the present suit, on the evidence which I have heard, it seems clearer to me that the accident must have occurred at or around 8.00 a.m. and not as early as 7.30. The police who arrived at about 8.15 a.m. at the scene on information received about the accident received their first information whilst they were on patrol duty at Boon Teck Road about a couple of miles away at or around 8.05 a.m. The second and the first defendants respectively gave the time of the accident in their police reports as 7.30 a.m. and 8.20 a.m. This cannot be correct. The plaintiff said it was about 8.00 a.m. I find from the evidence that the accident must have occurred at about that time and most definitely before 8.20 a.m. because the police witnesses who arrived on information received found that the accident had already occurred when they arrived at 8.15 a.m.

When a police witness, P.W. 5, arrived at the scene at about 7.00 a.m. he found the traffic lights somewhat defective but the accident had not yet occurred. This particular witness, police constable Say Lip Buck arrived at the scene at 7.00 a.m. and took control of traffic along Bukit Timah Road at its junction with Stevens Road. He did not observe the state of traffic at the neighbouring junction of Whitley Road with Dunearn Road but the traffic at his junction, *i.e.* Stevens Road and Bukit Timah Road junction, was piling up and he controlled traffic by hand signals.

According to him the lights were in a state of disorder at that time and were going faster than normal. He saw green/amber/green in Stevens Road and he saw lights going in their proper sequence along Bukit Timah Road to the north, but faster than normal. When originally challenged in court as to the respective speeds of the two sets of lights along Stevens Road and Bukit Timah Road he was only able to say that they were faster than normal but when he was taxed by counsel for the plaintiff as to a statement he had made to Mr. Murphy, the senior partner in the same firm as counsel for the plaintiff, he admitted that he was not sure about the evidence he had given before me but agreed that what he had told Mr. Murphy in December 1968 was correct and that the lights were going as fast as at one second intervals.

It is important to consider this witness's evidence very carefully because he was also a witness in the previous proceedings. In the previous suit of course he did not given any evidence of this kind because Mr. Murphy saw him only in December, 1968, long after that suit had been concluded and decided. The present case with a new plaintiff in respect of the same accident came before me on 20th June, 1969 and was part-heard from time to time until 9th March this year. I was apprised of what had occurred in the suit before Buttrose J. where he found that the first defendant, the taxi driver, was only a quarter to blame and that the lorry driver who was driving along Whitley Road was three-quarters to blame for the same accident. Buttrose J. held that it was palpably obvious to anyone approaching the entire junction, be he pedestrian or motorist, that the lights were defective and that both the defendants should have been on their guard because a situation had arisen which called for the exercise of the utmost care and caution at

what was to all intents and purposes an uncontrolled intersection. Buttrose J. held that in those circumstances the lorry driver owed a greater duty to traffic approaching from his right along a one way main road than the taxi owed to him.

In the event of appeal, reference will no doubt be made to both the proceedings before Buttrose J. and before the Federal Court and perhaps before the Privy Council whatever my decision may be and I do not therefore propose to go into any great detail about those aspects of the evidence which were more or less the same both before Buttrose J. and before me.

The plaintiff in this action through his counsel adduced what he considered to be better evidence about the defective state of the lights at this junction than had been adduced before Buttrose J. and having considered the evidence before Buttrose J. on which the Federal Court (*Gan Soon Swee & Anor.* v. *Ramoo* [1969] 1 M.L.J. 59) decided that both the defendants were not to blame, I have come to the conclusion on the evidence before me, in so far as it differs from the evidence before Buttrose J., that a different conclusion can be reached from that reached by the Federal Court. I should not be taken to be holding that the evidence before me was perfect but it satisfied me on the case as a whole that the lights were in fact so defective as to have been a warning to the defendants to proceed with the utmost care and caution.

Counsel prevailed upon me to visit the scene which is as familiar to me as it was to Buttrose J. but on the occasion that I visited it during the trial I was taken to different positions along Whitley Road and along Dunearn Road to enable me to see from how far away one could see the lights clearly. Buttrose J., I understand, did not consider it necessary to visit the scene because he was familiar with it. Although I myself am familiar with the scene I nevertheless acceded to the request of counsel. Evidence was also called before me as it was not before Buttrose J. of a surveyor who submitted a plan (Ex. P9) from which it is clear that from more than two hundred yards away in either direction the lights in question are visible to a person with good eyesight though they would not necessarily be shining like beacons.

Moreover, a person driving a vehicle along either road would be able to observe the nature of the traffic along the other road fairly easily; at least, in the case of a vehicle travelling along Dunearn Road one could observe a vehicle in Whitley Road coming from one's left at a distance of 400 feet, almost immediately after passing the electric sub-station along Dunearn Road. Similarly, a person driving a vehicle along Whitley Road should be able to see traffic to his right along Dunearn Road travelling south along that one way street the moment that vehicle in Dunearn Road goes past the electric sub-station.

It should be remembered that before Buttrose J. the pleadings did not allege that the lights were known to be defective by either driver. Before me, however, the pleadings were different and particulars of negligence relating to the failure of either driver to notice that lights were out of order and to exercise extra care were in fact added.

Another difference between the evidence given before me and that before Buttrose J. was to the following effect. Whereas corporal Abdullah bin Rahman, P.W.4, who arrived at the scene at 8.45 a.m. said that it was possible that lights in both directions were green at certain stages at the same time the evidence before me of experts from the General Electric Company responsible for the maintenance of most of the traffic lights in Singapore (including those at this junction) was that it was virtually impossible for the lights in both directions to be green at the same time. This evidence I accept. There was clear evidence to the effect that the only reason why lights could show green in both directions would be when there was cable shortening. Insulation tests on all underground cables made it quite clear that they were in perfect condition and that there never could have been any cable shortening. Both the experts from the General Electric Company agreed on this.

This has been a somewhat perplexing case in the sense that I have to deliver a judgment without having the benefit of the decision of the Judicial Committee of the Privy Council on an appeal against the decision of the Federal Court in the previous suit as regards the respective degrees of negligence, if any, shown by either driver. In the meantime I am bound by the decision of the Federal Court to a certain extent on the kind of evidence which was before them as recorded by Buttrose J. As I do not know how long it will take before the decision of the Privy Council arrives and as I have already reserved judgment for nearly 4 months since March this year I have felt it incumbent on me to deliver a judgment as early as possible on the facts as they were presented before me. No doubt different results may appear but that cannot be helped much as I would like to avoid such a situation.

One outstanding feature of this case compared with the evidence before Buttrose J. is the fact that the taxi driver himself gave evidence before me. Before Buttrose J., on advice, he chose not to give any evidence at all. Another feature is that the plaintiff in the suit before Buttrose J. gave evidence of having seen that the lights were green along Dunearn Road. In the case before me, the present plaintiff, the fisheries officer from Sarawak, did not notice what the lights were like at all. As he was seated on the nearside of the back seat it is not surprising that he did not notice the lights as in the case of the plaintiff in the previous suit who was seated next to the driver.

This brings me to the question of the state of the lights on the morning in question and this depends to a very large extent not only on the evidence of police witnesses at the scene who saw them at differing periods between 7.00 a.m. and 9.15 a.m. after P.W.4 had switched on the lights at 9.05 a.m. It also largely depends on the view one takes of the evidence of the two experts from the General Electric Company.

Both the experts are agreed that the lights along both Dunearn Road and Whitley Road could not have shown green at the same time. Before Buttrose J. there was no such expert evidence and all that Buttrose J. had before him on the question of the lights in so far as their being green at the same time was con-

cerned was the evidence of P.W.4 who said that he saw the lights, at one stage, green at the same time in both directions and this Buttrose J. accepted. On the evidence before me, I do not accept that evidence as I prefer the evidence of the two experts.

I now turn to the question of the state of the lights at about 8.00 in the morning of 10th July 1966. It must be remembered that the police witnesses were giving their evidence a long time after the event. It should also be remembered that apart from P.W.4, who was in charge of traffic investigations, none of the other police witnesses were officers of any high rank or intelligence or experience in the maintenance of traffic lights and they were carrying out purely routine duties such as attending to injured persons, controlling traffic by hand signals, and so on. They were not particularly concerned with the speed of the lights.

It is unfortunate that, at an earlier stage, soon after 7.40 a.m. when P.W.5 reported that the lights were out of order, this was not conveyed to higher authority and that some senior police officer with greater understanding of these matters, say somebody from the traffic police charged with the maintenance of traffic lights in Singapore, did not come to the scene earlier. In so far as the evidence goes the only police officers who gave evidence were people like P.W.4 and P.W.5 and a few people who came in mobile patrol vans either to control the traffic by hand or to look after injured persons. It is therefore not surprising that most of them, when taxed about the speed of the lights, were quite unable to be more sure as to the speed at which the lights were changing. Some did not even look at the lights; some did not even see that the lights were out of order because they had other matters to attend to or were dense or obtuse or reluctant to commit themselves or unconcerned with matters outside their limited duties. This is the reason why I would draw attention to the evidence of P.W.4 and P.W.5 who showed greater initiative than the others and actually looked at the lights with some care.

The green/amber/green sequence at Stevens Road corresponded, according to the expert evidence, with the lights at the Whitley Road junction. According to P.W.4, the Whitley Road lights were changing faster than normal and green and amber were approximately of the same duration. Similarly along Dunearn Road the lights were changing in their normal sequence but faster than usual. All colours along Dunearn Road were approximately of the same duration. In his investigation papers, which he recorded at about midday on the same day, he wrote "Stevens Road green/amber/green rapidly changing. Dunearn Road changing in a proper order but fast." He saw no red light facing Whitley Road and also added rather significantly that although he said before me that the green was approximately of the same duration as the amber in Whitley Road he would not challenge his previous statement before Buttrose J. that green was longer than amber then. When I questioned him about what he had told me about the green having been of the same duration as amber he said that he didn't time it but that was what he thought, but if he had said to Buttrose J. that green was longer than amber that previous statement must have been correct. Green was definitely faster than normal.

It is well known that amber hardly ever lasts more than 3 seconds anywhere in Singapore. The evidence of one of the experts, the technician, Mr. Edward Chin, P.W.6, who carried out the repairs herein, is to the effect that the normal duration of amber at this junction was 3 seconds. If lights were going faster than normal and if lights were of approximately the same duration it is difficult to believe that the lights could have been going very much slower than at intervals of 2 seconds to say the least in both directions because of the synchronisation of the lights in both directions or, to use Mr. Snow's expression, "reciprocal relationship" between them. P.W.4 himself said that he did not time it. The truth of the whole matter is that nobody timed it. On the evidence before the Federal Court when it heard the appeal against the decision of Buttrose J., the Federal Court said that it would be idle and wrong to speculate how rapidly the lights were changing when the only evidence was that they were changing rapidly.

In the case before me I have positive evidence from P.W.4 to the effect that although the green may have been slightly longer than amber they were approximately of the same duration. Amber was also faster than usual according to this witness. I have also evidence before me that the lights were changing in their proper sequence in Dunearn Road. All colours were of approximately the same duration. I have no hesitation in concluding that the lights were changing rapidly along both directions, at such a speed that the green and the amber and the red were approximately of the same duration even though perhaps the green was slightly longer than the amber. Further, green plus amber in one direction would equal red in the other according to Mr. Chin. Further, I have the evidence of P.W.5 to the effect that they were changing at one second intervals as he had previously told Mr. Murphy in December 1968 to support the evidence of P.W.4 that all colours were approximately of the same duration. P.W.5 even said that green in Stevens Road was slightly longer than amber. I strongly doubt whether he would have said this if green had been 24 seconds which was the shortest duration of green Mr. Snow could visualise.

I now turn to the two experts. Mr. Edward Chin; P.W.6, gave evidence to the effect that he thought that the reason why the lights were going faster than usual was because of high resistance in the coil as opposed to a damp controller or to any timing valve defect. He said that it was possible for a light to change from green to amber to green at such a speed that with the red going extremely fast red would be indiscernible. He agreed with Mr. Hilborne's first question in cross-examination on behalf of the first defendant that it was possible for green in Whitley Road to be showing for one second, for amber to be showing for one second and for red to be showing for 1/10th of a second. He said that at 10.25 a.m. he found that the winding of the coil was broken and the lights fixed. It was im-

possible for lights in both directions to be green simultaneously. The cause of the breaking of the coil could be increased current as a result of rapid changing of the lights.

Now, if red were indiscernible at Whitley Road because of extremely high speed then, it follows that green should have been indiscernible along Dunearn Road, assuming that the lights were going so rapidly with red going so fast that it became indiscernible in Whitley Road. There was a relationship between green and the amber in Whitley Road which would combined be of the same duration as the red in Dunearn Road and *vice versa*. If the lights were red in Whitley Road then they would be green and amber in Dunearn Road. So, if the red did not show in Whitley Road because of very high speed there would be no green and amber in Dunearn Road.

I therefore had to consider carefully the evidence relating to the green/amber/green at Whitley Road whilst the lights were changing rapidly in their normal sequence in Dunearn Road. Why did the green show in Dunearn Road as P.W.4 said it did?

P.W.4 and P.W.5 were quite sure that they saw the lights in their correct sequence in Dunearn Road and Bukit Timah Road respectively. If the lights in Stevens Road and Whitley Road were not going so terribly fast as to make red indiscernible then the lights should have shown green/amber/blank, green/amber/blank. Both the experts were agreed on this. Because Mr. Chin did not find anything wrong with the red bulb after he completed his repairs, the necessary inference is that it had neither blown nor been removed but nevertheless did not show.

I now turn to the evidence of Mr. Snow, director of General Electric Company. He, however, never examined the lights on 10th July 1966. He went there the following day after the repairs had been completed. His evidence more or less is to the same effect as that of Mr. Chin except in one particular respect which I think is important. His evidence is to the effect that with a damp controller the speed of the lights would have been accelerated by not more than 25%. It should be noted that he was not asked about high resistance in the coil or any timing valve defect. He said he could not *visualise* the lights changing faster than by about 25%. In other words, if green is normally 30 seconds he could not visualise it being less than 24 seconds with a damp controller. It is unfortunate that he was not examined or cross-examined on the same lines as Mr. Chin had been with regard to speeds in the case of high resistance in the coil or any timing valve defect, nor was he asked his opinion as to what he thought caused the coil to break. On a balance of the evidence given by the two experts, one of whom actually carried out the repairs whilst the other who though a senior officer, was more theoretical and placed in the position of a person who was only visualising what the lights should have been, I accept the evidence of Mr. Chin in this respect and have no hesitation in concluding that the lights were changing so rapidly as to be evident to a user of either road though not so fast as to render red indiscernible in Whitley Road.

I have therefore evidence before me on which I can decide as I now do that the lights were changing so rapidly at equal intervals of at the most 2 seconds or even less that the fact that they were out of order must have been palpably obvious, as Buttrose J. held in the previous suit, to any person approaching the junction along either Dunearn Road or Whitley Road.

I find it difficult to believe that P.W.4 would have described the lights as changing rapidly or very quickly as he has all along maintained if the durations had been 24 seconds for green, 2¼ seconds for amber and 26¼ seconds for red which were the lowest durations Mr. Snow could visualise.

I now turn briefly to the evidence of the plaintiff who did not, however, notice the lights as the taxi entered the junction. He was looking to his left. The speed of the taxi was over 40 m.p.h. He said that there was plenty of traffic and that the taxi was travelling in the middle of the road. He also said that there were a lot of other cars speeding down. He saw the lorry coming along Whitley Road when it was 45 feet from the junction. The lorry was travelling faster than the taxi.

It should be remembered that when the lorry ran into the taxi the taxi had almost completed the crossing.

The first defendant, the taxi driver, said that he was travelling at between 20 to 30 m.p.h. along the left hand side of Dunearn Road towards the city. As he approached the junction he observed that the traffic light was red and he moved on when it turned green. He said the light was green when he was 38 feet away. There were no vehicles immediately to his front or to his left but there were three other vehicles, two of them more or less to his right and one to his right but further in front. All four of them went through the lights in that pattern. He agreed that his view was not obstructed. He saw the lorry when he himself was 50 feet and the lorry 76 feet from the junction. He said that the lorry was faster than himself and he presumed that the lorry would stop. He said he did not notice that the lights were out of order.

The second defendant, the lorry driver, said that as he approached the junction he saw the light was green in his favour at a distance of 40 to 50 feet from the junction. When he came within 15 feet from the junction he saw that it was still green and he accelerated. When he was 12 feet past the stop line he heard the noise of the taxi approaching in a fast manner like the sound of wind from his right. He said that his speed was then 10 m.p.h. He braked and swerved slightly to his left and then the collision took place. He left no brake marks but the taxi did. He said he never saw the taxi until the collision. He said that although he looked left and right he did not see the taxi. He knew that Dunearn Road is a one-way-street in favour of traffic proceeding to the city from his right. He estimated the speed of the taxi at 60 m.p.h. "from the sound it made". He said that as his lorry was loaded with sand his maximum speed along Whitley Road was 10 to 20 m.p.h. I do not

accept these estimates of speed. P.W.4 however confirmed that the lorry driver told him at the scene that the light was green in his favour whereas the taxi driver did not because he was in hurry, presumably to enter the ambulance.

I do not accept the evidence given by the two defendants as to the speeds at which they were driving their respective vehicles. I find that the plaintiff's version that they were both travelling at more than 40 m.p.h. is the more credible one. It seems to me absurd in all the circumstances that the lorry driver should have accelerated when he was 15 feet from the junction when it should have been obvious to him that the taxi was almost on top of him. According to the lorry driver there were no other vehicles along Whitley Road and Dunearn Road apart from the two vehicles which they drove. There was nothing to impede the view of either driver and they should certainly have seen one another at least after the taxi went past the electric sub-station in Dunearn Road which is about 200 feet from the junction.

What I find really took place was as follows on all the evidence as to the unusual circumstances prevailing at the time. The lights in both directions were, as I have already found, changing rapidly at equal intervals of 2 seconds at the most. They could have been changing at shorter intervals than that. They were both approaching the junction along their respective roads at more than 40 m.p.h. *i.e.* 60 feet per second. If they had been paying attention to the junction as they should have done, with nothing to obstruct their view of the road and the lights ahead of them they ought to have known that the lights were most certainly out of order. Moreover, they were undoubtedly travelling at great speed. Whilst it is true that the lights can be seen from at least two to three hundreds yards or more away from the junction in either direction there was nothing to prevent them observing the state of the lights when they were say at a distance of 100 to 200 yards from them if they were driving carefully. I find that the taxi driver saw the light red in the first instance as he was speeding down Dunearn Road and that it changed to green and then to amber just before he went over the stop line and he thought he could make it across the junction notwithstanding the fact that the lights were going pretty fast. In the meantime the lorry driver who was coming from his left should have noticed that his lights had changed from green to amber to blank as he was approaching the junction at speed. As he reached the junction, the blank must have changed to green at the same time as the lights in Dunearn Road changed to red behind the taxi driver as he went past them also at speed.

Perhaps it is unnecessary for me to determine, in view of my finding that the lights were so defective at the junction that both the defendants knew or ought to have known, if they had kept a proper lookout, that the lights controlling their entry into the junction were defective and not functioning properly, what light was actually showing to each driver at the time he reached the junction. The question then really becomes one of what a driver ought to do at an uncontrolled intersection bearing in mind that he ought to have seen the lights malfunctioning much earlier and been on his guard so as to exercise greater care. Travelling as they were at great speed they should have slowed down and perhaps also applied their brakes very much earlier. In my judgment both the defendants were undoubtedly guilty of negligence, the only question remaining being, as to liability, the question of degree. As the lorry driver, the second defendant was proceeding from a minor road on to a one-way major road the greater blame must undoubtedly attach to him as it was his duty to give way to traffic from his right. On his own evidence he never saw the taxi until it was almost on top of him when the latter was streaking past like the sound of wind. The lorry ran full tilt into the nearside of the taxi whilst both vehicles were belatedly taking avoiding action to no avail.

I do not consider that much assistance is obtainable from the authorities cited by counsel because they all deal with situations where nothing was wrong with the traffic lights in question at all. Nor do I consider that it would be fair to either driver for me to regard this intersection as completely uncontrolled before the lights came within vision as they were speeding down towards them. I think that *Lang* v. *London Transport Executive & Anor.*[1] is nearer this one on its facts. Had both roads been completely uncontrolled and of equal importance it would be difficult to say that they were not equally to blame in view of their high speeds. Doing the best I can in all the circumstances I find that the second defendant and the first defendant should share responsibility for the accident in the proportions of 2 to 1.

I now turn to the question of the damages I should award, special damage having been already agreed at $900. There is no doubt that the plaintiff sustained a number of injuries, the principal ones being the fracture of the left femur *i.e.* the thigh bone, and fractures of the shafts of the tibia and fibula of the left leg. These have left some multiple scars and he has undoubtedly sustained, as a result of a discharging sinus, a further shortening of his leg from 2 inches to 2½ inches in the last year or so. Although there is no further discharge from the sinus there is a likelihood of further shortening. There is also a 1¼ inches decrease in the girth of his left thigh and a 2-inch decrease in the left calf as compared to the measurements of the right thigh and right calf. As a result of these injuries he can no longer do field work and he can't run. Muscle strength is now about No. 4 in his left leg, assuming that the degree of muscle strength runs from nought to five, which is normal. That does not mean that he has 4/5ths of his former muscle strength in his left leg.

Mr. Fung, the Senior Orthopaedic Surgeon, in June 1969 made a report to the extent that he had been totally incapacitated for one year, partially disabled to the extent of 50% for 6 months, that he had in June 1969 a residual permanent disability of 30%, and that he is fortunate to have an employer sympathetic to his injuries who was prepared to employ him in a lighter capacity. Whilst it is no doubt true that his fractures have healed, it is also true that he has under-

gone considerable suffering and that he has had his promotion prospects somewhat affected. He was a fisheries officer undergoing a three-month course at the University of Singapore when he met with this accident and since then he has been unable to further his ambitions in the fisheries department. He has, however, been transferred to the establishment where he is employed on clerical duties because he can no longer do any field work, not at least for some considerable time.

So far as the injuries themselves are concerned, I find little difficulty in assessing what the general damages under the head of pain and suffering and loss of amenities and so on should be. I assess them in the round sum of $20,000.

The only difficulty is with regard to his loss of promotion prospects. He was a very junior officer in the fisheries department when he joined it in Sarawak in May 1966 and he was sent down to do this 3 months course at the university and he met with this accident in July. One does not really know how well he would have progressed in that field. He has said that his promotion prospects were better in the fisheries department than now as a clerical officer in the establishment but it is extremely difficult to predict what course his career in the fisheries department would necessarily have taken or what his future in the establishment will be.

It is odious to make comparisons based on promotion prospects and salaries as between different departments of the Government service as sometimes service in one department, though promising in the early stages, may as a result of changing conditions, turn out to be less rewarding while service in another department with a seemingly less promising future may turn out to be more fruitful than originally expected.

Undoubtedly initial prospects appeared to be rosier in the fisheries department which the plaintiff had just joined before the accident. It is said that he is now incapable of doing field work and because he is attached to the establishment he may not be able to rise as high in the latter service as in the fisheries department. It may well be that in the absence of any deterioration in his mental alertness and general efficiency he may achieve heights in the establishment which he might never have been able to reach in the fisheries department even though his immediate prospects there in 1966 were brighter.

However, there is always the likelihood that he could have done better in the fisheries department at least in the first five to ten years or so. I do not think that one should only take into account the extra allowances for field work, subsistence and so on which he could have earned in the fisheries department. It is difficult to conclude that he would have done so well there and made so much more money there than in the establishment that one should apply that yardstick alone to assess the greater financial benefits he would have gained over any greater length of time. There are always a number of other factors, both tangible as well as intangible, to be considered in assessing future prospects and chances of promotion. Some officers have been known to stagnate for reasons only known to their immediate superiors and the promoting authority. However, in view of the unfortunate accident which has, nevertheless, reduced his immediate chances, I would assess, for what it is worth, doing what I can in the realm of little more than speculation, damages under this head in the round sum of $7,000 at the very most.

I therefore assess total general damages in the round sum of $27,000. Together with agreed specials at $900 there will be judgment for $27,900 to the Public Trustee for the plaintiff to be paid by the first and second defendants in the proportions I have indicated.

Order accordingly.

Solicitors: *Murphy & Dunbar; Hilborne & Co.: Battenberg & Talma.*

RE S. SIVASUBRAMANIAM; *EX PARTE* NAGALINGAM, A CREDITOR

[O.Bk.J. (Ibrahim J.) February 11, 1969]

[Malacca — In Bankruptcy No. 6 of 1967]

Bankruptcy — Adjudication — Application for adjournment — Submission of proposal for composition after expiry of prescribed period — Bankruptcy Act, 1967, ss. 8(2), 24(3) and 93(2).

This was an application by the official assignee for the debtor to be adjudged a bankrupt under section 24(3) of the Bankruptcy Act, 1967. The debtor against whom a receiving order was made on October 16, 1967 and his public examination was concluded on June 17, 1968, submitted a proposal for a composition for presentation to his creditors on October 16, 1968. Section 24(3) provides that the court shall adjudge a debtor bankrupt if such composition or scheme was not accepted or approved within 14 days after the conclusion of the public examination.

Held: (1) unless the debtor was made a bankrupt, the unsecured creditors would not be able to get any real benefit at all, and an adjournment therefore would be detrimental to their interests;

(2) the granting of an adjournment would restrain the official assignee from selling the debtor's unsecured property and in the circumstances of this case the assistant official assignee's opposition to the request for adjournment was reasonable and proper.

Cases referred to:-

(1) *Re Ng Say Tee; Official Assignee, F.M.* v. *Manmohan Singh* [1954] M.L.J. 177.

(2) *Re Chew Kean Kor* [1957] M.L.J. 34.

BANKRUPTCY.

Jaginder Singh (Assistant Official Assignee) for the Official Assignee.

K. D'Cruz for the debtor.

Cur. Adv. Vult.

Ibrahim J.: On 16th October 1967 a receiving order was made against the debtor trading as Peter Chong & Co. of No. 34, Jalan Laksamana, Malacca on the petition of a creditor. The public examination